In the High Court of Punjab and Haryana at Chandigarh

.....

C.W.P. No.14234 of 2006

.....

Date of decision:17.1.2007

Subhash Chander

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Ms. Natasha Sharma , Advocate for the petitioner.

Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab for respondent No.1.

Mr. Kulwant Singh Boparai, Additional Advocate General, Punjab for respondents No.2 to 6.

.....

S.S. Nijjar, J. (Oral):

The petitioner was appointed as Junior Engineer with the Punjab State Electricity Board (`Board' – for short) on 15.6.1967. FIR No.254 dated 24.7.1984 was registered against him in Police Station Mansa under Section

5(2) of the Prevention of Corruption Act read with Section 161 IPC. The allegation made against the petitioner in the FIR was that he had agreed to accept Rs.1,500/- from one Daulat Ram as illegal gratification for not registering a case/FIR with regard to the theft of electricity against him. By judgment and order dated 3.10.1991, the petitioner was convicted under Section 5(2) of the Prevention of Corruption Act and under Section 161 IPC by the learned Additional Sessions Judge, Bathinda. He was sentenced to undergo rigorous imprisonment for one and half years on each count. Criminal Appeal No.397-SB of 1991 filed by the petitioner in this Court against conviction and sentence was admitted on 24.10.1991. The sentence imposed on the petitioner was suspended and he was enlarged on bail. In view of the fact that the petitioner had been enlarged on bail, he continued to work with the Board. He was given his promotions in due course. However, he was given only the basic pay against these posts. On 23.10.2003, the petitioner was dismissed from service by invoking Article 311(2)(a) of the Constitution of India read with Regulation 14.1 of the Employees Punishment and Appeal Regulations, 1971. Copy of the order of dismissal has been attached with the writ petition as Annexure-P.1. After the order of dismissal was passed, this Court allowed the criminal appeal filed by the petitioner by judgment and order dated 1.7.2005. Against the order of acquittal the State of Punjab preferred Special Leave Petition (Criminal) No.3262 of 2006. This was also dismissed by the Supreme Court on 10.7.2006. It is noteworthy that in spite of the pendency of the criminal proceedings, the petitioner continued to perform his duties in the Board and was also granted promotions in his due turn till he was dismissed

from service on 23.10.2003. He worked on the post of JE-II till December 1988. He was promoted as JE-I in January 1989 and continued as such till October 1997. He was further promoted as Assistant Engineer (AE) in November 1997 and continued to work as such till June 2003. In July 2003, he was further promoted as Assistant Executive Engineer (AEE) and continued to work as such till 23.10.2003, when the impugned order of dismissal was passed against him. As noticed earlier, the petitioner was acquitted in appeal by this Court on 1.7.2005. However, before he could be reinstated in service, he reached the age of superannuation on 31.7.2004. Therefore, petitioner could not be reinstated on being acquitted by the High Court from the criminal charges. He was consequently denied his salary w.e.f. 23.10.2003 till 31.7.2004. He had already been denied the fixation of salary in the scales of the promoted posts, nor any increments had been granted to him, from 24.7.1984. The petitioner was also denied the grant of promotional scales after completion of 9, 16 and 23 years of service. He was also not given the proficiency step-up due to him after completion of 8 and 18 years of service. The petitioner, armed with the order of acquittal dated 1.7.2005, started making representations to the Board for retiral benefits. Copies of the representations submitted by the petitioner on 4.10.2005, 19.4.2006, 22.5.2006 and 6.7.2006 have been attached with the petition as Annexures-P.4 to P.7. When no action was taken by the respondents on the representations, he also submitted a legal notice to the respondents on 12.6.2006. Again the respondents did not take any action. The petitioner has, therefore, filed the present writ petition under Articles 226/227 of the Constitution of India praying for issuance of a writ in the

nature of certiorari setting aside the order of dismissal dated 23.10.2003 (Annexure-P.1); a writ in the nature of mandamus directing the respondents to consider the petitioner to be in service and for the grant of salary and other allowances upto the date of retirement i.e. 31.7.2004. The petitioner also prays for directions to the respondents to grant all monetary benefits from 24.7.1984 to date of his dismissal with all consequential benefits after re-fixing his pay and for release of the retiral benefits including pension.

Notice of motion was issued in this writ petition on 7.9.2006. On 9.11.2006, Mr. Kulwant Singh, Advocate appeared for the respondents. The matter was adjourned till today. The respondents have not cared to file the reply. Today, however, in Court Mr. Kulwant Singh Boparai has filed a reply which is not in compliance with Rule 2(a), Chapter 1, Part-A of the High Court Rules and Orders, Volume 5. Normally, the reply is expected to be filed in the Registry three days prior to the date of hearing of the case. [See Rule 29, Chapter 4, Part-F of the High Court Rules and Orders, Volume 5]. It is also required to be typed in double spacing on one side of the paper only on water marked plain paper. The written statement which has been produced before the Court is on the noting paper of the State of Punjab, typed in single space. The written statement is clearly not in proper form. We may also notice that the counsel for the respondent-Board has put in appearance only after the Bench has commenced dictating the judgment. During the course of the dictation, the learned counsel made a request that he may be permitted to file the written statement in Court. We permitted him to file the written statement even though it is not in proper form and deserves to be rejected. We shall make a reference to the contents of the

same in the interest of justice. In the written statement, the respondents have virtually admitted the entire case. In paragraph 6, it is stated that the case for withdrawal of the order of dismissal of the petitioner from service is under process and on withdrawal of the same his pay will be fixed as per regulations/instructions of the PSEB.

Learned counsel for the respondent-Board submits that the petitioner had been dismissed at the time when he had not been acquitted. Now that he has been acquitted and SLP of the State against acquittal has been dismissed, the Board will withdraw the order of dismissal. We are of the considered opinion that in view of the stand taken by the respondents, it has to be accepted that the petitioner was entitled to be reinstated in service on being acquitted by this Court. However, out of abundant caution we have examined the judgment passed by this Court in Criminal Appeal No.397-SB of 1991. The learned Single Judge has considered the entire matter in depth. The petitioner has been acquitted on merits. The conclusion reached by the High Court is as under:-

> "After perusing the events as they unfolded themselves, I find that the appellants are definitely not hardened criminals. A person used to take bribe would have functioned in a more sophisticated manner. Looked at from another angle, once Ex.P8/A has already come into existence, it would not be possible for either of the appellants to help the complainant Daulat Ram as the matter went out of their purview and had to be handled by the R.A. The meters having already been sealed and report regarding misdemeanor having been finalized there

was no way in which any official of the electricity department could have short circuited action which would ensue. In these circumstances, it was hardly probable that the appellants would have allowed the complainant to approach them with a request to soft paddle the action which had been initiated against him. The shot having already been fired it was just a matter of time before it would hit target. There was no scope for the appellants scuttling the process that had been set into motion by them. Therefore, the version put forth does not appear to be probable, especially when the appellants do not contest the position that there were no prospects of their being to reduce the damage, which was likely to ensue by report of Ex.P8/A. In this view of the matter I am inclined to accept the stand taken by the appellants.

For the reasons recorded above, the appeal is allowed and the appellants are acquitted of the charges framed against them.

July 1, 2005. Sd/- AMAR DUTT
JUDGE"

The petitioner having been acquitted of the criminal charges on merits cannot be said to have been acquitted on mere technicality. It is settled proposition of law that once a government employee/public servant is acquitted on merits, he is entitled to be reinstated in service. It is also a settled proposition of law that acquittal of the criminal charges by either the trial Court or by the High Court in appeal is not a complete bar for the

employer to conduct a departmental inquiry against the employee, if so advised, even during the pendency of the criminal proceedings. In the present case, the Board did not conduct any departmental proceedings against the petitioner. Rather, he was permitted to continue on the job inspite of the criminal proceedings. He not only continued to perform his duties but he was given his due promotions from due dates. Having taken work from the petitioner and having given due promotions to the petitioner, in our opinion, the Board was wholly unjustified in not granting him the pay which was due to him on the posts on which he was working. The claim of the petitioner for promotional scale and proficiency step-up as set out in the petition also had to be considered at the appropriate times. We find support for this view from the observations of the Supreme Court in the case of Brahma Chandra Gupta v. Union of India, 1984 (2) SLR 165, which read as under:-

> "Mr. R.K. Garg, learned counsel for the appellant wanted us to examine the scope and ambit of Article 193 and Mr. Gujral learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both. The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for

> the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial Court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow the appeal, set aside the judgment of the first appellate Court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout."

In view of the aforesaid observations, we are of the opinion that it will be wholly unjust at this stage to permit the respondents to withdraw the order of dismissal at some future date whenever the next meeting of the Board is to be held. It has been submitted by the learned counsel for the Board that the meetings of the Board are convened only at intervals during the year. He is unable to state the date on which the next meeting of the Board will be held. We are of the considered opinion that the petitioner has already suffered injustice for the last 22 years as he has been deprived of the monetary benefits of the posts on which he was working since 1984.

In view of the above, we allow the writ petition and quash the impugned order of dismissal (Annexure-P.1) dated 23.10.2003. We direct the respondent-Board to re-fix the pay of the petitioner at every stage and at appropriate time by granting him the promotional scale after completion of

9, 16 and 23 years and proficiency step up after completion of 8 and 18 years of service. He is also held entitled to the annual increments from 24.7.1984. The respondents are directed to release the retiral benefits after re-fixation of the pay in accordance with law. The consequential benefits be released to the petitioner with 9% interest from the due date till the date of payment. The entire exercise be completed within a period of three months from today.

(S.S. Nijjar)
Judge

January 17, 2007. **(S.S. Saron)**
Judge

hsp

Whether fit for indexing: Yes